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**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

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10 and SARAH COUTTS

**filing**

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA **EMC**

13 DAVID COUTTS and SARAH  
14 COUTTS,

15 Plaintiffs,

16 vs.

17 SUBARU OF AMERICA, INC., and  
18 DOE 1 through DOE 10 inclusive,

19 Defendants,

Case No.

**CV 10 5877**  
COMPLAINT FOR VIOLATION OF  
THE SONG-BEVERLY CONSUMER  
WARRANTY ACT

PLAINTIFFS DEMAND TRIAL BY  
JURY

**FILE BY FAX**

20 Plaintiffs allege:

**I.**

**JURISDICTION**

- 21 1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1332.
- 22 2. Plaintiffs DAVID COUTTS and SARAH COUTTS (hereinafter
- 23 "Plaintiffs") are, and at all times mentioned herein were, competent adults.
- 24 3. Plaintiffs at all times mentioned herein were citizens and residents of
- 25 California.
- 26 4. Plaintiffs are informed and believe and thereupon allege that defendant
- 27 SUBARU OF AMERICA, INC. is a corporation incorporated under the laws of New
- 28 Jersey and having its principal place of business in New Jersey, and is licensed to do

1 business in California.

2 **II.**

3 **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT**

4 5. Defendants DOE 1 through DOE 10 inclusive are sued herein. DOE 1  
5 through DOE 10 are each independently, or as a representative of another defendant  
6 in this suit, responsible in some manner for the causes of action set forth herein and  
7 the damages sustained by Plaintiffs.

8 6. Plaintiffs purchased the subject 2010 Subaru Outback, VIN:  
9 454BRDLC6A2336507 (“the subject vehicle”) on or about December 20, 2009 from  
10 Diablo Auto Inc. in Walnut Creek, California. The subject vehicle is a new motor  
11 vehicle that was bought primarily for personal, family, or household purposes or it  
12 is a new motor vehicle with a gross vehicle weight under 10,000 pounds that was  
13 bought or used primarily for business purposes by an entity to which not more than  
14 five motor vehicles are registered in this state. The subject vehicle is a “new motor  
15 vehicle” under the Song-Beverly Consumer Warranty Act, Civil Code §§1790 et seq  
16 (“the Act”).

17 7. Diablo Auto Inc. is engaged in the business of distributing or selling  
18 consumer goods at retail. Plaintiff is a “buyer” under the Act.

19 8. SUBARU OF AMERICA, INC. manufactures, assembles, or produces  
20 consumer goods. SUBARU OF AMERICA, INC. is a “manufacturer” under the Act.

21 9. SUBARU OF AMERICA, INC. issued an “express warranty” to  
22 Plaintiffs in which, *inter alia*, SUBARU OF AMERICA, INC. undertook to preserve  
23 or maintain the utility or performance of the subject vehicle. Said warranty was an  
24 integral factor in Plaintiffs’ decision to purchase the subject vehicle.

25 10. The subject vehicle has suffered from nonconformity(s) to warranty,  
26 including, but not limited to, defect(s) which have manifested in recurrent engine  
27 malfunction, activation of the engine oil warning light, excessive engine oil  
28 consumption, burning of the engine oil, and engine oil leak. Said nonconformity(s)

1 have substantially impaired the vehicle's use, value, or safety to Plaintiffs.

2 11. Plaintiffs have delivered the vehicle to SUBARU OF AMERICA, INC.  
3 or its authorized repair facility(s) for repair of said nonconformity(s). SUBARU OF  
4 AMERICA, INC. or its authorized repair facility(s) have failed to service or repair the  
5 subject vehicle to warranty after a reasonable number of attempts.

6 12. The subject vehicle was not fit for the ordinary purposes for which such  
7 goods are used and was not of the same quality as those generally acceptable in the  
8 trade. SUBARU OF AMERICA, INC. breached the implied warranty of  
9 merchantability and implied warranty of fitness. Plaintiffs are entitled to revoke  
10 acceptance of the subject vehicle under the Act.

11 13. SUBARU OF AMERICA, INC. has not replaced the vehicle or  
12 otherwise made restitution to Plaintiffs pursuant to its obligations under the Act.

13 14. Plaintiffs are informed and believe and thereupon allege that SUBARU  
14 OF AMERICA, INC.'s refusal to replace the vehicle or make restitution to Plaintiffs  
15 was wilful and not the result of a good faith and reasonable belief that the facts  
16 imposing said statutory obligation were absent.

17 15. Pursuant to the Act, Plaintiffs are entitled to restitution in an amount  
18 equal to the actual price paid or payable by Plaintiffs and collateral charges such as  
19 sales tax, license fees, registration fees, and other official fees less an amount directly  
20 attributable to use by Plaintiffs prior to the time Plaintiffs first delivered the vehicle  
21 for repair.

22 16. Plaintiffs are entitled to recover incidental, consequential, and general  
23 damages, including, but not limited to, reasonable repair, towing, and rental car costs  
24 actually incurred by Plaintiffs.

25 17. Plaintiffs are entitled to recover a civil penalty up to two times the  
26 amount of actual damages for SUBARU OF AMERICA, INC.'s wilful refusal to  
27 comply with its statutory obligations under the Act.

28 18. Plaintiffs are entitled to recover a sum equal to the aggregate amount of

1 costs and expenses including attorney's fees based on actual time expended and  
2 reasonably incurred in connection with the commencement and prosecution of this  
3 action.

4 WHEREFORE, Plaintiffs pray judgment against SUBARU OF AMERICA,  
5 INC. as follows:

6 1. For actual damages, including collateral charges, and incidental,  
7 consequential, and general damages. To date, such damages include, but are not  
8 limited to Plaintiffs' cash purchase price (\$38,360.80), and, in amounts according to  
9 proof, vehicle registration, expenses inadvertently omitted herein, and other future  
10 expenses reasonably incurred by Plaintiffs in connection with this action; and

11 2. For a civil penalty up to two times the amount of actual damages; and

12 3. For rescission of the contract and restitution of consideration; and

13 4. For interest on said sum from date of rescission to date of judgment  
14 herein; and

15 5. For attorney's fees based on actual time expended and reasonably  
16 incurred in connection with the commencement and prosecution of this action; and

17 6. For costs of suit incurred in connection with the commencement and  
18 prosecution of this action; and

19 7. For such other and further relief as the court deems proper.

20 WHEREFORE, Plaintiffs demand trial by jury.

21 DATED: December 17, 2010

THE BICKEL LAW FIRM, INC.  
Attorneys for Plaintiffs

22  
23 By:

  
BRIAN K. CLINE